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Importance of EU Anti-Discrimination Law

Sources of EU Equality Law

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Multi-level system of protection against discrimination

National constitution and domestic legislation

EU Law (especially EU directives)

International human rights' treaties (e.g. European Convention on Human Rights)

National level of protection

- Constitutional protection of equality and non-discrimination
- Domestic legislation influenced by EU law through implementation of EU directives and the CJEU case-law
- Influence of international law:
  - Sometimes broader protection (e.g. fight with domestic violence, protection of persons with disabilities)
  - Supplementing national framework for protection
- Influence of the case law of the CJEU and the ECtHR
- Role of ombudsman institutions and equality bodies in shaping standards

EU Law – development of anti-discrimination protection

- Treaty on European Union – prohibition of discrimination due to sex: important condition for the Single Market and free movement of workers; extensive case-law of the ECJ (e.g. C-43/75, *Defrenne v. Sabena*)
- Treaty of Amsterdam – Article 19 TFEU – new grounds for protection against discrimination
  - "[…] the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on **sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation**."
- Protection of EU citizens (nationals of Members States) from discrimination due to their nationality
- Impact of the EU Charter of Fundamental Rights (Articles 20 and 21 of the Charter): limited scope of applicability of the Charter

EU secondary legislation

- Different aspects of discrimination due to sex in employment and provision of services (2006/54, 2004/113, 2010/41, 97/7 and 92/85)
- Racial Equality Directive (2000/43) and Employment Equality Framework Directive (2000/78)
- Directives strengthening equal chances for men and women:
  - Share the Care (2019/1158)
  - Equal Pay Directive (2023/970)
  - Women on Boards' Directive (2022/9381)
- Directives on independence of equality bodies (2024/1499 and 2024/1500)

Charter and EU legislation – example of anti-discrimination laws

- Article 19 TFEU - EU competence to adopt anti-discrimination laws and policies - selected protected grounds of discrimination, as compared to wording of the Charter (especially Article 21 Section 1):
  - *"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."*
- Articles 20, 21, 22 and 1 of the Charter – „constitutional" non-discrimination and equality clauses in the Charter
  - verification of the legislation (e.g. C-528/13, *Leger*, situation of honorary blood donors)
  - strengthening the EU anti-discrimination legislation
  - interpretation in light of international treaties ratified by the European Union
  - potential horizontal effect of the Charter, C-414/15, *Egenberger*

Equality and other EU legislative activities

- Equality and non-discrimination principles may be included in other legislative acts adopted at the EU level
- CJEU may interpret them and check whether EU values and general principles are fulfilled:
- Examples include:
  - Victims' Rights Directive (2012/29)
  - General Data Protection Regulation (“GDPR”) (2016/679)
  - Digital Services Act (2022/65) – e.g. protection against hate speech in social media platforms
  - Artificial Intelligence Act (“AI Act”) (2024/1689)
  - Platform Work Directive (2024/2831)
  - Accessibility Directive (2019/882)
  - Whistleblowers’ Protection Directive (2019/1937)
  - Conditionality Regulation (2020/2092) – important instrument to check whether EU Member States comply with basic standards of EU law

What is missing in the EU law?

- Protection against hate speech: limited by the absence of an appropriate treaty competence (please compare: ECtHR case-law, especially *Vejdeland v. Sweden*)
- Limited list of protected grounds under Article 19 TFEU
  - Please compare to Article 21 of the EU Charter to Article 14 ECHR
- No comprehensive horizontal anti-discrimination directive (current directives cover only limited areas of social life)
- The EU Charter applies to EU institutions and bodies and to Member States when implementing EU law - it cannot be interpreted as a competence for new legislative activities
- Implementation gap: certain Member States are reluctant to implement fully the EU law (or make it in a superficial way)

	Racial or ethnic origin	Sex	Religion or belief	Disability	Age	Sexual orientation
Employment, working conditions, professional development	x	x	x	x	x	x
Social protection, including healthcare	x					
Social entitlements	x	x				
Education	x					
Access to goods and services	x	x				

Development of some concepts in jurisprudence - examples

- *C-144/04 Mangold and C-555/07 Kücükdeveci* - non-discrimination principle due to age as a general principle of EU law
- *C-267/12 Hay* – equality of rights of employees in same-sex civil partnership as compared to marriages; see also *C-267/06, Tadao Maruko*
- long-term disease vis-a-vis disability, *C-335/11 Jette Ring v Dansk almennyttigt Boligselskab DAB and C-337/11 LoneSkouboe Werge v Pro Display A/S*
- burden of proof in discrimination cases, standing, homophobic remarks made by the patron of football club, *e.g. C-81/12, Asociaţia ACCEPT, C-507/18, NH v Associazione Avvocatura per i diritti LGBTI*
- adoption of effective and practical measures by employers in Member States concerning employees with disabilities, *C-312/11, Commission v. Italy*
- obesity as disability – *C-354/13, Kaltoft*
- discrimination by association – *C-303/06, Coleman*
- maximum age for recruitment of a police officer, *C-416/13, Vital Pérez v Ayuntamiento de Oviedo*
- housing rights and non-discrimination due to racial and ethnic origin, *C-303/21, Danish Housing Cases*
- concept of reasonable accommodation, *C-485/20, HR Rail*

EU Equality Law and international human rights' treaties

- European Union is a party to certain international human rights' treaties
  - The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
  - Convention on Rights of Persons with Disabilities
- Ratification by the EU of international human rights' convention has impact on its own practices, on legislation and on interpretation of rights
- EU did not join the European Convention on Human Rights
- But: the ECHR is binding on member-states of the EU (as well as other Council of Europe states)
- The ECtHR plays an important role in interpretation and clarification of certain concepts relating to anti-discrimination law

Importance of the CJEU case-law

- CJEU clarifies how key concepts should be applied - preliminary references from national courts are an important driver of legal development
- CJEU develops and expands the meaning of anti-discrimination concepts
- Recognises new categories (e.g. discrimination by association or discrimination by assumption)
- New concepts developed by the CJEU can influence national legislation
- EU citizenship case law has also contributed to the development of protection, including for LGBT+ persons
- CJEU clarifies the connection between:
  - the EU anti-discrimination law in secondary legislation
  - protection of general principles of the EU law
  - Protection of EU values (Article 2 TEU)

Impact of the EU citizenship on equality protection

- EU Treaty protection of EU citizens (extensive CJEU case-law)
- General concept of EU citizens (nationals of EU Member States) – they should be treated equally in other Member States and not restricted in exercise of their free movement rights
- Freedom of movement of EU citizens in same-sex relationships
  - C-673/16, *Coman*
- Same-sex marriage certificates and their transcription in other EU Member States, C-713/23, *Wojewoda Mazowiecki*
- Recognition of transgender rights, *C-43/24, Shipova*

Commission v. Hungary – EU values as a new source of interpretation

- C-769/22, *Commission v. Hungary*, judgment of 21 April 2026
- Abusive legislation in Hungary as regards LGBT+ people; numerous EU Member States joining the case brought by the Commission
- Ground-breaking summary of the EU law on equality and non-discrimination
- CJEU has a right to review legislation of EU Member States in light of compliance with values enshrined in Article 2 TEU
  - *„stigmatisation and marginalisation, which is tantamount to establishing, maintaining or reinforcing the social 'invisibility' of some members of society, runs counter to the values of respect for human dignity, equality, and respect for human rights, including the rights of persons belonging to minorities, as referred to in Article 2 TEU."*

Practical application of anti-discrimination law

- Knowledge of EU secondary legislation and relevant case law
- Effective use of anti-discrimination rules in judicial decision-making
- Use of practical guidance and supporting materials
  - e.g. Handbook by the EU Agency of Fundamental Rights and the European Court of Human Rights (available in different languages) https://fra.europa.eu/en/publication/2018/handbook-european-non-discrimination-law-2018-edition
- Important role of NGOs, equality bodies and Ombudsman institutions
  - E.g. publications by Equinet: https://equineteurope.org/publication-depository
- Effective protection depends not only on legal rules, but also on their practical implementation

Conclusions

- Anti-discrimination protection is inherently multilevel
- National, EU and international law interact and complement each other
- EU legislation has expanded significantly, but important gaps remain
- CJEU and ECtHR case law plays a major role in developing the meaning and scope of equality
- Practical enforcement remains essential to effective protection
- A lot depends on judges: the recent Polish same-sex marriage transcription case is a great example of the role of judiciary

Thank you for your attention

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